IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE, JURISDICTION

CRIMINAL WRIT PETITION NO.2190 OF 2005

Rajesh Vasant Jadhav,)
Aged: 24 years, Indian)
Inhabitant permanently)
residing at Near B.D.S.)
School, Sambhaji Nagar,)
Ghatla Village, Chembur,)
Mumbai-400 071.) PETITIONER.

Versus

1. The State of Maharashtra,)
through the Public Prosecutor,)
High Court (A.S.),Bombay.)

2. The Commissioner of Police)
for Greater Bombay, having)
his Office near Crawford)
Market, Mahatma Phule Marg,)
Mumbai-400 001.) RESPONDENTS.

....

Mr.Ghanshyam Upadhyay with Mr.Gaurav Agrawal, Advocate for the Petitioner.
Mrs. A.S.Pai, APP for the State.

....

CORAM : D.G.DESHPANDE &
SMT.V.K.TAHILRAMANI, JJ.

DATE : APRIL 17, 2006.

ORAL JUDGMENT (PER Smt.TAHILRAMANI,J.)

1. Through this Petition under Article 226 of the Constitution of India, the petitioner-detenu has impugned the order of detention dated 30th June, 2005 passed by respondent No.2-Commissioner of Police, Greater Bombay. By the said order, the detenu came to

be detained under Sub-Section (2) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 (hereinafter referred to as the MPDA Act). The detention order alongwith grounds of detention dated 30th June, 2005 was served on the petitioner-detenu on 2nd July, 2005.

2. A perusal of the grounds of detention would show that the impugned detention order is founded on one C.R. i.e. C.R.No.35 of 2005, and three in-camera statements. However, for deciding the present petition, we do not feel it necessary to go into the details of the four incidents, on which the detention order is based.

3. We have heard Mr.Upadhyay learned Advocate for the petitioner and Mrs.Pai learned APP for the State. Although, in this Writ Petition many grounds have been pleaded, Mr.Upadhyay has only pressed three grounds i.e. Ground No.5, Ground No.10 and Ground No.9.

4. The first Ground is that there is inordinate delay in issuing the order of detention. Hence, the live link between the incident and the order of detention is snapped. The said ground is raised in

Ground No.5 of the Petition, which reads as under :

> "5. The Petitioner most respectfully states and submits that there has been inordinate delay in passing the impugned order dated 30.6.2005 by the respondent No.2 and no explanation has been offered by the Respondent No.2 who is the detaining authority for such delay and on this ground alone the impugned order dated 30.6.2002 is vitiated and deserves to be quashed and set aside by this Hon'ble Court."

. The learned Advocate for the petitioner has submitted that the incident relating to the C.R.No.35 of 2005 took place on 28.1.2005. However, the order of detention is issued on 30.6.2005 i.e. after gap of more than five months. In view of this, the live link between the incident and the order of detention is snapped.

5. The said ground has been replied by the detaining authority in Para 10 of his affidavit. In short in the reply, the detaining authority has stated that the incident pertaining to C.R. No.35 of 2005 took place on 28.1.2005. Thereafter, during the course of confidential enquiry, it was found that a number of persons had suffered at the hands of detenu and his associates. However, the persons were not willing to come forward to give any statement against the detenu. After giving assurances to them that their names and

identifying particulars would be kept secret and they would not be called upon to give evidence in any Court or open forum, three witnesses came forward to give their statements. These statements were recorded in-camera on 8.2.2005, 11.2.2005 and 14.2.2005.

. Thereafter, the statements were verified by the Assistant Commissioner of Police of the concerned Division. Thereafter, the proposal came to be submitted as per usual practice to the Zonal Deputy Commissioner of Police. We have noticed that the proposal is dated 8.5.2005. The detaining authority in his affidavit has stated that, "After receiving the proposal, the DCP carefully went through the papers and gave his endorsement on the proposal on 9.5.2005. Thereafter the papers were forwarded to the Senior Inspector of Police, PCB,CID. He carefully went through all the papers and gave his endorsement on 16.5.2005. It is stated that the papers were thereafter forwarded to the Deputy Commissioner of Police(Preventive). The Deputy Commissioner of Police (Preventive) went through all the papers and gave his endorsement thereon on 20.5.2005. Thereafter all the papers were forwarded to the Additional Commissioner of Police (Crime), who gave his endorsement after considering the proposal and all the papers on

21.5.2005. Thereafter all the papers were put up before me and after carefully going through the same, I approved the same on 10.6.2005."

. Thereafter the detaining authority in his return has stated that, "In the period between 21.5.2005 to 10.6.2005 24 proposals of detention were pending with him, which was received prior to receipt of the present proposal." Thus, the detaining authority could approve the proposal in the present case only on 10.6.2005. It is seen that on 15th, 22nd, 23rd and 29th May, 2005, there were closed holidays so also on 5th June, 2005 there was a closed holiday.

6. The learned APP has further submitted that though the incident in the present case took place on 28.1.2005, the investigation in the said case was going on and the medical certificate in respect of C.R.No.35 of 2005 was received in the Police Station on 13.4.2005 which is reflected from the affidavit of the sponsoring authority. Thus, it is stated that the papers relating to the investigation of the said C.R. were being received by the Police Station upto 13.4.2005. Thereafter, after gathering all the papers, the proposal was prepared in relation to the present

detenu. Before that, the set of the accompanying documents was prepared. Thereafter, this proposal was forwarded through proper channel on 8.5.2005. Thus, it is seen that the papers relating to the investigation of this case were being received upto 13.4.2005. Thereafter, obviously it will take some time for the sponsoring authority to go through all the material and prepare the proposal. It may be stated that while preparing of proposal, a number of sets of the relevant documents have to be prepared by xeroxing relevant documents, thereafter the index has to be prepared, and only thereafter the proposal can be said to be complete. Thus, the time required between 13.4.2005 till 8.5.2005 i.e. the date when the proposal was submitted, cannot be said to be an inordinate period for the work which was required to be done during that period. Moreover, the sponsoring authority in its affidavit has stated that during the said period, the concerned officer was also handling 24 other proposals relating to preventive actions. Looking to this fact, it cannot be said that the said period from 13.4.2005 to 8.5.2005 is inordinate.

7. Mr.Upadhyay has submitted that after the Additional Deputy Commissioner of Police has put his endorsement on 21.5.2005, the Commissioner of Police

has approved the proposal on 10.6.2005 thus there is gap of almost twenty days. This gap, according to him, is unexplained and hence it would vitiate the order of detention.

. We find that the said gap between 21.5.2005 to 10.6.2005 has been explained by the detaining authority in his affidavit. The detaining authority has stated that in the said period 24 proposals of detention were pending with him which were received prior to the receipt of the present proposal. This would mean that the proposal pertaining to the present detenu was the 25th proposal which was being considered by the detaining authority. In this view of the matter, the period of 20 days for considering 25 proposals cannot be said to be inordinate.

8. In respect of the period after the proposal was approved till issuing the detention order i.e. from 10.6.2005 to 30.6.2005, the said period has been explained by stating that thereafter, the papers were forwarded to the sponsoring authority for the purposes of fair typing, for preparing the translation of the documents in the language known to the detenu and for

preparing necessary sets of the documents. It is stated by the sponsoring authority in its return that since the detenu was not knowing English language, the documents were required to be translated in Marathi language. There were 27 documents which were required to be translated. After these documents were translated, necessary sets were prepared. Thereafter, certificate of translation of the Assistant Commissioner of Police was obtained on 29.6.2005. Thereafter, necessary sets of the documents were forwarded to the Senior Inspector of Police, PCB, CID. On 30.6.2005, the detaining authority has issued the order of detention. It is seen that in the period between 10.6.2005 to 29.6.2005, there are five holidays. Moreover, though the documents were 27 in number, these documents did not consist of single page documents but most of the documents consist of more than one page and some of the documents consist of even eight pages. Thus, it is seen that it is not as if only 27 pages had to be translated and xeroxed and made into sets but a much larger number of pages had to be translated. In view of this, we find that the period between 10.6.2005 to 29.6.2005 has also been explained in the return of the sponsoring authority and the detaining authority. Thus, we find that the there is no unexplained and inordinate delay in issuing the

order of detention.

9. On the ground of delay in issuing the order of detention, the learned Advocate for the petitioner has placed reliance on the decision of this Court in the case of **Smt.Sharadbhai Shankar More Vs. Shri M.N.Singh, Commissioner of Police, Greater Bombay & Ors.** reported in **2002 Vol.104 (1) Bom. L.R. 413**. Mr.Upadhyay has submitted that in the said case the detention order came to be quashed as there was no satisfactory explanation for delay. In the said case the incident took place in first week of September, 2000. However, the order of detention was issued on 19th February, 2001. Mr.Upadhyay has pointed out that in the said case there was delay in three pockets which delay was not satisfactorily explained and they are :

(a) 4th November, 2000 to 12th January, 2001.
(b) 12th January, 2001 to 31st January, 2001.
(c) 31st January, 2001 to 19th February,2001.

. As far as the first pocket is concerned, the Court was of the opinion that the reply was vague as the detaining authority should have specified the actual numbers of the detention matters and fresh proposals pending before it. Moreover, in the reply it

was not stated whether the detention orders cleared by the detaining authority were prior to the proposal submitted to detain the detenu. However, in the present case, it is seen that the detaining authority has specifically stated the number of proposals which were before him and that they were received prior to the proposal of the present detenu. Thus, this case is distinguishable on facts from the case relied upon.

. As far as the second pocket in the case relied on, is concerned, the delay occurred in the said period on account of translation of documents. The Court held that the period for translation of 27 documents in Marathi was far too long. In the present case on perusing the explanation given for the period from 10.6.2005 to 29.6.2005 i.e. the period required for translation which is reflected in para-8 above, we find that the delay has been satisfactorily explained.

. As far as the third pocket is concerned in the case relied upon i.e. 31st January, 2001 to 19th February, 2001, in the said period after approval by detaining authority and after completing all necessary formalities of translation etc., the file was put up before the detaining authority on 31st January, 2001 but the detaining authority issued the detention order

on 19th February, 2001.

. However, in the present case, the file was put up before the detaining authority on 29.6.2005 and the detention order is issued on 30.6.2005. Thus, the decision relied upon is of no help in the present case. Moreover, it is to be noted that in the case of **Smt.Sharadbhai**, the detention order was not quashed on account of delay in any one pocket but it was quashed on account of delay in three separate pockets. Had there been delay in any one pocket, the detention order may not have been quashed as the live link may not have been considered to be snapped. It is seen that in the said case, the detention order is quashed only as the cumulative result of the delay in three separate pockets.

10. Mr.Upadhyay has also placed reliance on the decision of the Supreme Court in the case of **Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and others,** reported in **1993 Supp (2) Supreme Court Cases 61**, wherein there was a delay of over four months from submission of the proposal in passing the order of detention. In the said case, it was observed that the delay being unexplained, it vitiates the order of detention. However, in the present case, the proposal

is submitted on 8.5.2005 and the order of detention is issued on 30.6.2005. The said period is less than two months. Moreover, the delay has been explained by the detaining authority and the sponsoring authority. Thus, we find no merit in this submission.

11. It is to be noted that mechanical calculations of days and months cannot be done. The rule is that as long as the live link between the prejudicial acts and the detention order is not snapped, as long as the alleged incident is not too remote to show that the propensity to indulge in future in prejudicial activities has ceased to exist, it cannot be said that the live link is snapped.

12. The second ground, which has been raised is that the copies of the in-camera statements had not been verified by any Senior Officer and it was falsely contended by the detaining authority in the grounds of detention that they were so verified. The said ground is raised in Ground No.10 of the petition, which reads as under :

> "10. The Petitioner states and submits that the Respondent No.2 proceeded to pass the impugned order dated 30.6.2005 against the petitioner without being subjectively satisfied about the truthfulness and authenticity of the three in-camera statements purported to have been recorded on 8.2.2005, 11.2.2005 and 14.2.2005

> concerning the incidents which allegedly occurred in the last week of the December, 2004, second week of January, 2005 and last week of January 2005 respectively. The said in-Camera statements have not been verified by any Senior Officer as has been falsely contended by the Respondent No.2 in the ground of the impugned order which can be supported from the copies of those in-camera statements which have been supplied to the petitioner alongwith the ground of the detention order."

. In the return, it is specifically stated that all the three in-camera statements were verified by the Assistant Commissioner of Police of the said Division. Moreover, the files have been produced before us, which clearly show that indeed the in-camera statements had been verified by the Assistant Commissioner of Police. Infact the documents furnished to the detenu also bear the endorsement of the Assistant Commissioner of Police. In this view of the matter, this ground fails.

13. The next ground which was raised by the learned Advocate for the petitioner is that extraneous material has been considered by the detaining authority and that the extraneous material on which the detaining authority has placed reliance i.e. Chapter Case No.43/2003 and C.C.No.83 of 2003 were not supplied to the detenu and hence on this count the order of detention is vitiated. The said ground is raised in Ground No.9 of the Petition, which reads as under :

> "9. The petitioner states and submits that impugned order dated 30.6.2005 has been passed by the Respondent No.2, the detaining authority on extraneous consideration. The Respondent No.2 while passing impugned order has relied upon proceedings initiated against the petitioner concerning Chapter Case No.43/2003 and C.C.No.83 of 2003 without the material concerning the said cases being placed before him and moreover the copies of the said proceedings have not been supplied to the petitioner alongwith the copy of the ground which is mandatory in law and therefore the impugned order dated 30.6.2005 is vitiated on this ground alone."

. Mr.Upadhyay, the learned Advocate for the petitioner has submitted that the detaining authority in the grounds of detention has made reference to Chapter Case No.43 of 2003 and C.C.No.83 of 2003. However, no such material was placed before the detaining authority nor the copies of such material were supplied to the detenu hence the detention order is vitiated for consideration of extraneous material by the detaining authority and for non furnishing of material on which the detaining authority has placed reliance to the detenu.

14. Mr.Upadhyay has placed reliance on the decision of the Supreme Court in the case of **Vashisht Narain Karwaria Vs. State of U.P. and another,** reported in **(1990) 2 Supreme Court Cases 629**, wherein it is observed that when extraneous material was taken into

consideration by the detaining authority in passing the order of detention, the detention order would be vitiated.

. Mr.Upadhyay has also placed reliance on the observations in the case of **Kamalabai w/o Kalicharan Yadav Vs. State of Maharashtra & another**, reported in **2001(5) Bom.C.R.352**, which are as under :

> "...In para 4 of the detention order, the detenu is dubbed as a dangerous person as defined under the provisions of the said Act. The detenu was thus dubbed as dangerous person on the basis of para 1 to 3 which certainly has gone into and influenced in the passing of the detention order. It is only thereafter that the detention order enumerates the recent criminal activities on the basis of which the detention order is said to have been passed which includes two offences and two in camera statements of the witnesses. The tenor of the grounds of detention does suggest that past history has considerably influenced the Detaining Authority in passing the detention order and on the basis of the past history the detenu was first dubbed as dangerous person and then only the recent criminal activity has been referred to in the detention order. The copies of the said material were not furnished to the petitioner which influenced the Detaining Authority in passing the detention order which has also affected the right of the detenu to make effective representation, thereby vitiating the detention order".

. Mr.Upadhyay has submitted that the facts in the present case are similar.

15. The Apex Court in **Abdul Sathar Ibrahim Manik V. Union of India and others**, reported in, **A.I.R. 1991 S.C. 2261**, has laid down that when the Detaining Authority has merely referred to certain incidents in the narration of events and has not relied upon them, the same will not cause any prejudice to the detenu in making a effective representation. Whether in a given case the Detaining Authority has casually or passingly referred or relied upon such instance would depend on the facts and the grounds which is required to be examined by the Court.

16. In the present case, the detaining authority in his reply has specifically stated that he has not relied upon the proceedings relating to Chapter Case No.43 of 2003 and C.C.No.89 of 2003. He has stated that these incidents are mentioned in the grounds of detention only by way of preamble to the prejudicial activities of the detenu and in the opening para of the grounds of detention itself he i.e. detaining authority has stated that the present order of detention was issued on the incidents mentioned in para No.5 of the grounds of detention. We have noticed that the reference to the Chapter Case No.43 of 2003 and C.C.No.89 of 2003 is made before Para-5. The detaining authority has further stated that, the chapter

proceeding and C.C.No.89 of 2003 were mentioned by the sponsoring authority in their proposal. The proposal being confidential document, the copy of the same would not be supplied to the detenu. The detaining authority has specifically stated that as the chapter case and C.C.No.89 of 2003 were not actually the grounds of detention in the present case, there was no question of the detenu making a representation in respect of the said cases. Hence, it was not necessary to supply those documents to the detenu and his right to make a representation was not defeated on account of non-supply of the documents relating to these averments.

17. Mrs.Pai, learned APP, has also submitted that the distinguishing factor between the present case and the case of **Kamlabai** is that in the present case in the very first para itself, the detaining authority has specifically stated that the detention order has been made by him on the basis of the grounds mentioned in Para 5 below. From this fact, it is clear that the grounds of detention in the present case are the incidents mentioned in para 5 and not those in para 1 to 4, in which paras passing reference to C.C.No.89 of

2003 and chapter proceeding has been made. After going through the grounds of detention in the present case, it is clear that the detaining authority has merely referred to C.C.No.89 of 2003 and Chapter Case No.43 of 2003 by way of a passing reference and he has not relied upon them to issue the order of detention.

. As has already observed by us, in the present case after examining the grounds of detention, we are of the opinion that the detaining authority has only made a passing reference to C.C.No.89 of 2003 and Chapter Case No.43 of 2003 and they have not been relied upon by the detaining authority to issue the order of detention. In such case, non supply of the material relating to Chapter Case and C.C.No.89 of 2003 to the detenu would not vitiate the right of the detenu to make an effective representation.

18. Mrs.Pai, learned APP, has also pointed out that the decision in the case of Kamalabai K.Yadav V. State of Maharashtra (Supra) has been considered in subsequent decisions of this Court. She has pointed out two of them i.e. in the case of **Sanjay Kalpanath Pandey Vs. Shri M.N.Singh & Ors.**, reported in **2001 ALL**

MR(Cri) 2241; and an unreported decision dated 16th March, 2002 in Cri.Writ Petition No.16 of 2002 in the case of **Virendra @ Viru Gopichand Mayekar Vs. Shri M.N.Singh & Ors.**(to which one of us i.e. D.G.Deshpande,J. was a party). In the case of **Sanjay Pandey** after considering the decision in the case of **Kamlabai** this Court observed,

> "17. In our judgment, the said decision would not be applicable because, in the instant case, first in para 5 of the grounds of detention the prejudicial activities of the detenu have been set forth and thereafter in para 6 the detaining authority has categorised him as a dangerous person under Section 2(b-i) of the M.P.D.A. Act.
>
> . Apart from it, in para 1 of the grounds of detention and in para 11 of his return, the detaining authority has categorically stated that the detention order was founded on the grounds contained in para 5 of the grounds of detention and he was not influenced by the antecedents of the detenu contained in paras 2, 3 and 4 of the grounds of detention.
>
> . We make no bones in observing that in the factual matrix of his case, there is not even an iota of a possibility of the detaining authority being influenced by the past history of the detenu and that being so, there was no question of his supplying to the detenu the documents pertaining to it and of the detention order being vitiated because, he did not supply them to him."

19. In the case of **Virendra @ Viru Mayekar** this Court after considering the decision in the case of **Kamlabai** observed thus,

> "14. A careful perusal of the detention order in the instant case before us would show that in

the very first paragraph, the detaining authority has clarified as to on what grounds the detention order is founded. The relevant portion of paragraph 1 is as under :-

> "I hereby communicate to you the grounds mentioned in paragraph 4 below, on which the detention order has been made by me on this day against you under Sub Section 1 of Section 3 of the said Act. Copies of the documents placed before me are enclosed."

. In the instant case, therefore, the detaining authority had clearly mentioned that the detention order is based on the grounds mentioned in paragraph 4 below, of the grounds of detention and it is on these grounds detention order has been passed by him against the petitioner detenu under Sub Section 1 of Section 3 of the said act. Therefore, the facts of Kamlabai Yadav's case (Supra) and the facts of the instant case are different."

. The facts in these two cases i.e. **Sanjay Pandey** and **Virendra Mayekar** are similar to those of the present case, hence the said decisions would apply to the facts of the present case. In this view of the matter we find no merit in this ground and hence this ground too fails.

20. In the result all the grounds raised by the learned Counsel for the petitioner fail. Hence, the petition is dismissed. Rule discharged.

(D.G.DESHPANDE,J.)

(SMT.V.K.TAHILRAMANI,J.)